7-25-05

2121

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:oppensteadt et al. :

Serial No.:	09/771,019	:	Examiner:	Hirl, Joseph P.
Filed:	January 26, 2001	:	Group Art Unit:	2121

TITLE: **Phase-locked Loop Oscillatory Neurocomputer**

LETTER REQUESTING WITHDRAWAL OF IMPROPER SUPPLEMENTAL REASONS FOR ALLOWANCE

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to applicants' Petition to the Commissioner Under 37 C.F.R. § 1.59(b) to Withdraw and Expunge Improper "Supplemental Reasons for Allowance" this application has been withdrawn from allowance and returned to the examiner for "prompt appropriate action."* See the "Notice of Withdrawal from Issue Under 371.313(b)" of April 29, 2005. Applicants now request that the examiner withdraw the improper "Supplemental Reasons for Allowance" issued February 24, 2005. The Supplemental Reasons for Allowance inappropriately comment on the allowed claims, attempt to narrow the allowed claims by reading into them specific features mentioned in the specification and the abstract and illustrated in the drawings. The Supplemental Reasons for Allowance violate the Patent and Trademark Office's standard of claim interpretation, are in violation of the Rules of Practice, and place a cloud on the interpretation of the claims in this application.

On October 14, 2004 the Patent and Trademark Office issued a Notice of Allowance, Notice of Allowability and Reasons for Allowance in the application identified above. Payment of the issue fee was due no later than January 14, 2005. The issue fee was paid January 10, 2005. On February 24, 2005 "Supplemental Reasons for Allowance" were issued by the Office.

* Applicants' Petition was subsequently dismissed for lack of a fee.

In the Supplemental Reasons, interpreting claims 18 and 20, the examiner contends, incorrectly, that the claim term "neural network computer" is defined in the abstract. In the Supplemental Reasons the examiner states:

> Applicant defines "neural network computer" in the abstract as follows:
>
> A neural network computer (20) includes a weighting network (21) coupled to a plurality of phase-locked loop circuits (25_1-25_N). The weighting network (21) has a plurality of weighting circuits (C_{11},...,C_{NN}) having output terminals connected to a plurality of adder circuits (31, -31_N). A single weighting element (C_{kj}) typically has a plurality of output terminals coupled to a corresponding adder circuit (31_k). Each adder circuit (31_k) is coupled to a corresponding bandpass filter circuit: (35_k) which is in turn coupled to a corresponding phase-locked loop circuit (25_k). The weighting elements (C_{11}, ..., C_{NN}) are programmed with connection strengths, wherein the connection strengths have phase-encoded weights. The phase relationships are used to recognize an incoming pattern.

The Supplemental Reasons go on to say that the claims import not just the above-quoted Abstract content, but all of the features of Fig. 1 of the drawings and the description of Fig. 1 at pages 3 and 4 of the specification:

> Figure 1 attached is the associated schematic diagram for neural network computer (20). Fig. 1 is further defined on page 4 and 5 of the specification. Applicant's statement "using a phase deviation between signals representing a learned pattern and signals representing the incoming pattern" can only infer an oscillatory neural network computer. Further, from specification at p. 4, l 13-15, the output signals $V(\theta_1)$, $V(\theta_2)$, ... $V(\theta_{N-1})$, $V(\theta_N)$ have equal frequencies and constant, but not necessarily zero, phase relationships. Hence, claim 18, carries all of the limitations of Fig. 1 (PLL are neurons) which include the abstract and the detailed description of pages 3 and 4 of the specification.

The case law and the Office's own Manual of Patent Examining Procedure (M.P.E.P.) are clear that "During patent examination, the pending claims must be given [their] broadest reasonable interpretation consistent with the specification." M.P.E.P. § 2111, p. 2100-46 (Rev. 1, Feb. 2003), citing *In re Hyatt*, 211 F. 3d 1367, 1372, 54 USPQ2d 1664 (Fed. Cir. 2000). Accord, *In re Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004).

At Section 2111.01, the M.P.E.P. expresses how the terms of the claims "must" be interpreted:

> While the ** claims of <u>issued</u> patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the

> mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. *In re Zletz*, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) (discussed below)>; *MSM Investments Co. v. Carolwood Corp.*, 259 F.3d 1335, 1339-40, 59 USPQ2d 1856, 1859-60 (Fed. Cir. 2001). (Emphasis original.)

Manual of Patent Examining Procedure, § 2111.01, p. 2100-47 (Rev. 1, Feb. 2003).

The plain meaning of the words of a claim is the meaning that would be understood by one skilled in the art:

> When not defined by applicant in the specification, the words of a claim must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art.> *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001) (explaining the court's analytical process for determining the meaning of disputed claim terms); *Toro Co. v. White Consol. Indus., Inc.*, 199 F.3d 1295, 1299, 53 USPQ2d 1065, 1067 (Fed. Cir. 1999) ("[W]ords in patent claims are given their ordinary meaning in the usage of the field of the invention, unless the text of the patent makes clear that a word was used with a special meaning.").

Manual of Patent Examining Procedure, § 2111.01, p. 2100-48 (Rev. 1, Feb. 2003). There is nothing in the present application to suggest a special meaning for the terms of the claims and they should be understood as one ordinarily skilled in the art would understand them, not by the importation of unclaimed language and features from the drawings and the specification.

The Abstract statement quoted by the examiner is not a definition. The Abstract is not a part of the specification of the application, and the Abstract cannot be used to impart a definition to a claim term.

Use of the Abstract to interpret a claim is in violation of the Office's Rules of Practice, 37 C.F.R. 1.72(b):

> ***The purpose of the abstract is to enable the United States Patent and Trademark Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure. <u>The abstract will not be used for interpreting the scope of the claims</u>. (Emphasis supplied.)

The Abstract does not "define" claim terms, it is a guide to the technical content of the patent disclosure. Per 37 C.F.R. 1.72(b) it is not available for use in interpreting the claims.

For all of the above reasons, the "Supplemental Reasons for Allowance" issued after closure of examination are improper, are contrary to the Office's practice and rules, and should be withdrawn. Such action is now respectfully requested.

No fee is believed required, however, authorization is given to charge any additional fees associated with this communication to Deposit Account No. 070135. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

GALLAGHER & KENNEDY, P.A.

Date: 7/21/05

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For: **Phase-locked Loop Oscillatory Neurocomputer**

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Commissioner for Patents
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Alexandria, VA 22313-1450

Dear Sir:

I hereby certify that the following correspondence is being deposited in the United States Postal Service as Express Mail on today's date in an envelope addressed as shown above:

1. Letter Requesting Withdrawal of Improper Supplemental Reasons for Allowance (4 pages); and
2. A return receipt postcard.

on the date shown below:

7/21/2005
Date

Suzanne Shields

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